IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

GLENDA MANCÍA, et al.	:	
	:	
v.	:	
	:	Civil Action No. CCB-08-273
MAYFLOWER TEXTILE SERVICES CO., et al.	:	
	:	

...o0o...

MEMORANDUM

Plaintiffs Glenda Mancía, Henri Sosa, Sandra Suazo, María Daysi Reyes, Alfredo Aguirre, and Obdulia Martinez (collectively "plaintiffs"), on behalf of themselves and those similarly situated, have sued their current or former employers, Mayflower Textile Services Company ("Mayflower"), Mayflower Healthcare Textile Services, LLC ("Mayflower Healthcare"), Mayflower Surgical Service, Inc., Mayflower Uniforms and Medical Supplies, LLC, Lunil Services Agency, LLC ("Lunil"), Argo Enterprises, Inc. ("Argo"), and Mukul Mehta (collectively "defendants") for alleged violations of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq*., the Maryland Wage and Hour Law ("MWHL"), Md. Code Ann., Labor & Empl. Art. 3-501 *et seq*., and the Maryland Wage Payment and Collection Act ("MWPC"). Now pending before the court are two motions brought by the plaintiffs: a motion for collective action certification and court-approved notice under the FLSA § 216(b), and a motion for preliminary injunction against Argo, Lunil, Mayflower, and Mr. Mehta.[1] The issues in this case have been fully briefed and no hearing is necessary. For the reasons stated below, plaintiffs' motion for

[1] Defendants have filed corresponding motions to strike the translated declarations plaintiffs used in support of their motions. For reasons to be discussed below, these motions will be denied.

collective action will be granted, and plaintiffs' motion for preliminary injunction will be granted in part and denied in part.

BACKGROUND

Defendant Mayflower is a commercial laundry services company with facilities in Baltimore, Maryland and Belcamp, Maryland. It is part of the Mayflower Group, which also includes defendants Mayflower Healthcare (based at its Belcamp facility), Mayflower Surgical Service, Inc., and Mayflower Uniforms and Medical Supplies, LLC. Mayflower's president is defendant Mukul Mehta. Mayflower's commercial laundry services operate in conjunction with defendants Argo and Lunil, both of which are or have been involved in the payment and/or supervision of Mayflower Healthcare employees at the Belcamp facility. Mayflower's Belcamp facility employs approximately 60 to 100 employees. (Pls.' Mot. for Class Cert. at Ex. E, Mancía Declaration ¶ 23; Pls.' Mot. for Prelim. Inj. at Ex. B.)

All the named plaintiffs in this suit were employed at various times at Mayflower's Belcamp facility, where they were each paid an hourly rate to perform manual labor. Payments for their work were made by Lunil until Dec. 31, 2007, and by Argo thereafter. Plaintiffs all allege that they regularly worked more than 40 hours per week and never received time and half for overtime pay. Four plaintiffs - Ms. Mancía, Mr. Sosa, Ms. Suazo, and Ms. Reyes - also allege that they were told by other employees at the facility who worked over 40 hours per week that they too were not receiving appropriate overtime pay. Ms. Mancía alleges that at one point she asked her supervisor, Miguel Treviño, about overtime pay, and he told her that the company had never paid overtime, that its policy was not to pay overtime, and that the employees could

not do anything about it. Furthermore, he allegedly told her that if employees tried to do anything about their lack of overtime pay, "Mukul *compra a los abogados*," meaning that Mr. Mukul would "buy off" the employees' lawyers. (Pls.' Mot. for Class Cert. at Ex. E, Mancía Dec. ¶ 21.)

On February 5, 2008, less than one week after this lawsuit was filed, Mr. Treviño approached Ms. Reyes to discuss a document that he claimed she had signed, in which she pledged not to work more than 70 to 80 hours in any two-week pay period. When Ms. Reyes asked to see it, she alleges that Mr. Treviño told her it was in the possession of the defendants' lawyers. Mr. Treviño then allegedly required her to sign a piece of paper, which he compared to another signature which she could not see, and also told her that if she worked more than 80 hours per pay period her overall pay would be reduced. The next day, Ms. Reyes claims that the man who regularly drove her to work received a call from Mr. Treviño, who told him that he should not give her a ride to work because she was fired.

On February 13, 2008, Mr. Sosa was informed by another supervisor at Mayflower Healthcare, a man known as "Soni," that he was being moved to the afternoon shift, which Mr. Sosa alleges involves 20 hours of labor per week rather than 40 or more. Mr. Sosa says that Soni knew this shift change would reduce his hours to an economically unsustainable level, thus having the effect of constructively firing him. Mr. Sosa also alleges that Mr. Treviño forced him to pay $60 before he would release Mr. Sosa's last paycheck.

On March 6, 2008, Ms. Martinez, who had ceased working at the Belcamp facility in January, attempted to retrieve her final paycheck from the offices of Argo, and was told that, in order to collect it, she would have to pay $20 cash. After paying the $20, Ms. Martinez received

a paycheck that only covered 31 of the 75 hours of work for which she was owed payment. She alleges that, the following day, she received a phone call from her supervisor, Mr. Treviño, asking her if she wanted her job back and telling her that she could get it back if she signed a document in which she would agree not to continue as a plaintiff in this litigation.

ANALYSIS

A. Collective Action Certification & Court-Approved Notice

Plaintiffs seek to certify their FLSA claims on behalf of all non-exempt current and former employees of the Defendants who work or worked at the Belcamp facility as a collective action. *See* Title 29 U.S.C. § 216(b).[2] Collective actions differ in three important respects from Rule 23 class actions. *See* Fed. R. Civ. P. 23. First, collective action plaintiffs must affirmatively "opt in" to the suit in order to be considered a member of the class. *See Marroquin v. Canales*, 236 F.R.D. 257, 259 (D. Md. 2006) (discussing § 216(b)'s "opt-in" provision). Second, collective action plaintiffs are not bound by the requirements of Rule 23[3]; they only need to demonstrate that they are "similarly situated." *D'Anna v. M/A-COM, Inc.*, 903 F. Supp.

[2] 29 U.S.C. § 216(b) states, in pertinent part:

> An action to recover the liability prescribed in either of the preceding sentences may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought.

[3] These requirements are: (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy. Fed. R. Civ. P. 23(a).

889, 893 (D. Md. 1995). Third, and related to the second, plaintiffs seeking collective action certification, unlike those seeking Rule 23 class certification, need only make a "relatively modest factual showing" that they are similarly situated in order to proceed as a class. *D'Anna*, 903 F. Supp. at 894; *compare Thorn v. Jefferson-Pilot Life Ins. Co.*, 445 F.3d 311, 319 (4th Cir. 2006) (stating that, "[a]t the class certification phase [under Rule 23], the district court must take a 'close look' at the facts relevant to the certification question and, if necessary, make specific findings on the propriety of certification") *with Sperling v. Hoffmann-La Roche, Inc.*, 118 F.R.D. 392, 407 (D. N.J. 1988), *aff'd in part*, 862 F.2d 439, 444 (3d Cir. 1988), *aff'd*, 493 U.S. 165 (1989) (noting that, with initial collective action certifications under § 216(b), "courts appear to require nothing more than substantial allegations that the putative class members were together the victims of a single decision, policy, or plan"). This showing must consist of more than "vague allegations" with "meager factual support," but it need not enable the court to reach a conclusive determination whether a class of similarly situated plaintiffs exists. *D'Anna*, 903 F. Supp. at 893-94.

The relevant questions for FLSA collective action certification, then, are whether the plaintiffs are "similarly situated" and, if so, whether court-facilitated notice is needed to enable additional prospective plaintiffs to opt in to the lawsuit. *See Enkhbayar Choimbol v. Fairfield Resorts, Inc.*, 475 F. Supp. 2d 557, 562 (E.D. Va. 2006). The answers to these questions are left to the sound discretion of the district court. *See Quinteros v. Sparkle Cleaning*, 532 F. Supp. 2d 762, 771 (D. Md. 2008). However, in reaching its answers, the court should be guided by the remedial purpose of the FLSA. *See Schultz v. Capital Intern. Sec., Inc.*, 466 F.3d 298, 304 (4th Cir. 2006) (discussing the need to apply the FLSA broadly to effectuate its remedial purpose).

Regarding the first question, plaintiffs here have sufficiently shown that they are "similarly situated" for purposes of collective action certification. Although the Fourth Circuit has yet to directly define "similarly situated" in this context, district courts in this circuit have held that a group of FLSA plaintiffs is deemed "similarly situated" when its members have shown themselves to be victims of a common policy, scheme, or plan that violated the law. *See Quinteros*, 532 F. Supp. 2d at 772; *Enkhbayar Choimbol*, 475 F. Supp. 2d at 563-64. This showing need not include evidence of a stated policy of refusing to pay overtime; "an adequate factual showing by affidavit . . . may suffice." *Marroquin*, 236 F.R.D. at 260-61. Here, the plaintiffs have produced sworn affidavits stating that they did not receive overtime pay, in many cases supported by printouts of hours per day worked during particular pay periods and corresponding pay stubs reflecting non-payment of overtime wages. (Pls.' Mot. for Class Cert. at Ex. E, Mancía Pay Stub & Timesheet; Ex. F, Sosa Pay Stub & Timesheet; Ex. G, Suazo Pay Stub & Timesheet; Ex. H, Reyes Pay Stub & Timesheet). At least one plaintiff has alleged in her affidavit that one of the supervisors told her that the policy at the Belcamp facility was not to pay overtime. These affidavits and the allegations contained therein are sufficient to establish, for purposes of this inquiry, that these plaintiffs are "similarly situated" as victims of a common scheme or plan by the defendants not to pay overtime at the Belcamp facility. Therefore, collective action certification is warranted for all non-exempt current and former employees of the defendants who work or worked at the Belcamp facility. *See Realite v. Ark Restaurants Corp.*, 7 F. Supp. 2d 303, 307-08 (S.D.N.Y. 1998) (holding that ten affidavits submitted by plaintiffs alleging failures to pay overtime or use time clocks or sign-in sheets constituted a sufficient factual showing to warrant collective action certification).

Regarding the second question, plaintiffs here have also sufficiently shown that court-facilitated notice is needed for their claims. Plaintiffs have alleged in their affidavits that other workers at the Belcamp facility told them they did not receive overtime pay, and these allegations are consistent with the fact that, since this lawsuit was filed, thirteen more plaintiffs have joined the suit. (*See* docket entries 12, 13, 25, 31, & 34.[4]) Moreover, this facility employs between 60 and 100 workers, many of whom may be unaware of this lawsuit, and there may be as-yet unidentified workers who previously worked at the facility with similar claims. *See Marroquin*, 236 F.R.D. at 260 ("The fact that there are, at least, approximately 113 unidentified co-workers who were in this same position weighs heavily in favor of allowing this case to proceed as a collective action and allowing a notice plan to move forward."); *Camper v. Home Quality Management Inc.*, 200 F.R.D. 516, 517-521 (D. Md. 2000) (finding notice to be warranted in a FLSA lawsuit involving 11 known plaintiffs and over 100 as-yet unidentified plaintiffs).[5]

Accordingly, the proposed notice plan and opt-in form plaintiffs submitted in August, 2008 are hereby approved, provided they are amended as agreed by both parties to refer to

---

[4] These additional plaintiffs are Albert Mancía, Jose Albert Mancía, Mayra Reyes, Ada Molina, Nuvia Gonzalez, Merlin Vigil, Maritza Guevara, Ana Zelaya, Jose Zelaya, Maria Miranda, Mario Figueroa, Joel Carias, and Esmeralda Hernandez.

[5] Defendants' reliance on *Dybach v. State of Fl. Dep't of Corrections*, 942 F.2d 1562 (11th Cir. 1991), and *Parker v. Rowland Express, Inc.*, 492 F. Supp. 2d 1159 (D. Minn. 2007), for the proposition that plaintiffs lack sufficient evidence of additional plaintiffs is misplaced. The former case does not create an evidentiary standard binding on this court, and moreover stresses that the court need only "satisfy itself" that there are additional plaintiffs, weighing in its determination the "broad remedial purpose of the Act." *Dybach*, 942 F.2d at 1567. The *Parker* case too narrowly construes the FLSA. *See Quinteros*, 532 F. Supp. 2d at 772 n.5.

"Mayflower Healthcare Textile Services and not "Mayflower Textile Services."[6]

B. Preliminary Injunction

Plaintiffs claim that defendants Argo, Lunil, Mayflower, and Mr. Mehta have engaged in retaliatory acts against them, and therefore ask this court to enjoin preliminarily these defendants from engaging in additional retaliatory acts pending trial. In determining whether to grant a preliminary injunction a court must consider four factors: "(1) the likelihood of irreparable harm to the plaintiff if the preliminary injunction is denied, (2) the likelihood of harm to the defendant if the requested relief is granted, (3) the likelihood that the plaintiff will succeed on the merits, and (4) the public interest." *Scotts Co. v. United Indus. Corp.*, 315 F.3d 264, 271 (4th Cir.2002) (quoting *Direx Israel, Ltd. v. Breakthrough Med. Corp.*, 952 F.2d 802, 812 (4th Cir.1991)); *see Blackwelder Furniture Co. of Statesville, Inc. v. Seilig Mfg. Co.*, Inc., 550 F.2d 189, 193 (4th Cir. 1977). Of these four factors, potential harm to the plaintiff and potential harm to the defendant are the most important. *Rum Creek Coal Sales, Inc. v. Caperton*, 926 F.2d 353, 359 (4th Cir. 1991). If, after weighing these two factors, the balance of hardships tips in favor of the defendant, a stronger showing on the merits is required. *Id.* If, however, the balance tips in favor of the plaintiff, a weaker showing may be sufficient. *Id.*; *see Scotts Co.* at 271.

The determination whether to grant a preliminary injunction is expected to be based on "evidence that is less complete than in a trial on the merits." *Univ. of Texas v. Camenisch*, 451

[6] Defendants seek to delete the retaliation provision of the proposed notice form. In light of the court's findings *infra* Part B, this provision will remain intact.

U.S. 390, 395 (1981). Therefore, the court may consider otherwise inadmissible evidence in making its determination. *See* 11A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice & Procedure* § 2949 (2d ed. 1995) ("inasmuch as the grant of a preliminary injunction is discretionary, the trial court should be allowed to give even inadmissible evidence some weight when it is thought advisable to do so in order to serve the primary purpose of preventing irreparable harm before a trial can be had"). This includes affidavits that may prove later to be inadmissible at trial. *United States ex rel. Taxpayers Against Fraud v. Link Flight Simulation Corp.*, 722 F. Supp. 1248, 1252 (D. Md. 1989) ("the Court may consider inadmissible affidavits in a preliminary injunction proceeding").[7] Furthermore, once both parties have "willingly joined the battle of affidavits," the court may make initial factual determinations - and resolve conflicting inferences of fact - without a hearing. *Blackwelder*, 550 F.2d at 192 n.1; *Fed. Leasing, Inc. v. Underwriters at Lloyd's*, 487 F. Supp. 1248, 1252-53 (D. Md. 1980).

Here, three of the named plaintiffs - Ms. Reyes, Mr. Sosa, and Ms. Martinez - have submitted sworn affidavits claiming that supervisors at the Belcamp facility retaliated against them for engaging in this litigation.[8] Ms. Reyes alleges that, after filing this lawsuit, her supervisor, Mr. Treviño, threatened to reduce her hours, and then fired her. Mr. Sosa alleges that

---

[7] For this reason, and because (1) the defendants have not challenged the accuracy of the translations and (2) Ms. Teresa Elguézabal, the translator, is no longer with the plaintiffs' law firm, the defendants' motions to strike the declarations of several named plaintiffs will be denied. The case relied upon by defendants, *Contracts Materials Processing, Inc. v. Kataleuna GMBH Catalysts*, 164 F. Supp. 2d 520 (D. Md. 2001), is readily distinguishable.

[8] The FLSA extends potential liability to "any person acting directly or indirectly in the interest of an employer in relation to any employee," 29 U.S.C. § 203(d), where "person" means "an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons." 29 U.S.C. § 203(a).

his hours were in fact reduced to unsustainable levels when his supervisor "Soni" moved him to the afternoon shift after this lawsuit was filed, amounting to constructive discharge, and that Mr. Treviño forced him to pay a fee to collect back pay. Ms. Martinez alleges that she too was forced to pay a fee to collect back pay, and that her supervisor, also Mr. Treviño, phoned her to persuade her not to continue with this litigation. These allegations, while contested by defendants,[9] are serious, and suggest that potential harm to other plaintiffs may result if an injunction is denied. Defendants, for their part, have not asserted that they would be harmed in any way by the granting of a preliminary injunction, and so the balance of hardships tips decidedly in favor of the plaintiffs. Since the balance tips in this direction, the plaintiffs need not make a strong showing of their likelihood of success on the merits. *Cf. Scotts Co.*, 315 F.3d at 271. Furthermore, the public interest weighs in favor of a preliminary injunction here. The FLSA was created to enable workers "to correct and as rapidly as practicable eliminate" unfair working conditions , 29 U.S.C. § 202(b). To the extent that a preliminary injunction in this case would protect the ability of workers to effectuate the remedial purpose of the FLSA, it advances the public interest.

What remains to be determined is the proper scope of the requested injunction. Plaintiffs have failed at this stage to show that Mr. Treviño, the source of most of the alleged retaliation, was an employee of Mayflower or Mr. Mehta. Nor have they shown that Soni was an employee

[9] Defendants deny knowledge of any firing of Ms. Reyes, and point out that her knowledge of being fired is based entirely on hearsay. Defendants claim that Mr. Sosa was misinformed about the effects of being moved to the afternoon shift on hours worked, and therefore his resignation did not amount to constructive discharge. As for Ms. Martinez, defendants claim that the failure to provide back pay without a fee was unrelated to this litigation. Defendants are silent on all the allegations concerning Mr. Treviño.

of Mayflower or Mr. Mehta.[10] Defendants admit that all three plaintiffs were employed by Lunil to work at the Belcamp facility until December 31, 2007, and that Mr. Sosa and Ms. Martinez were later under the employ of Argo at that facility, but they deny that Mayflower or Mr. Mehta had any involvement in either Argo's or Lunil's hiring, firing, or payment of these workers. (Defs.' Answer ¶¶ 6, 8, & 10; Defs.' Opp. to Pls.' Mot. for Prelim. Inj. at Ex. A, Mehta Aff. ¶ 3; Defs.' Opp. to Pls.' Mot. for Certification at 7.) As such, an injunction against Mayflower and Mr. Mehta is inappropriate at this stage. Furthermore, since neither party contests that Lunil has ceased to be involved in the hiring, firing, payment, or supervision of workers at the Belcamp facility, an injunction against Lunil is unnecessary.

Given these circumstances, this court will decline to issue a preliminary injunction against Mayflower, Mr. Mehta, and Lunil. The court will, however, issue a preliminary injunction against Argo, requiring it and any person under its employ to refrain from engaging in any retaliatory acts in connection with this lawsuit.

CONCLUSION

For the foregoing reasons, plaintiffs' motion for collective action will be granted; plaintiffs' motion for preliminary injunction will granted in part and denied in part; and defendants' motions to strike will be denied. A separate Order follows.

[10] At best, Soni's business card, submitted by plaintiffs, shows that he is affiliated with Mayflower Healthcare and the Belcamp facility. It does not establish that he acted directly or indirectly in the interest of Mayflower or Mr. Mehta, as opposed to Argo or Lunil.

October 14, 2008
Date

/s/
Catherine C. Blake
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

GLENDA MANCÍA, et al.	:	
v.	:	
MAYFLOWER TEXTILE SERVICES CO., et al.	:	Civil Action No. CCB-08-273

...o0o...

ORDER

For the reasons stated in the accompanying Memorandum, it is hereby **ORDERED** that:

1. The plaintiffs' motion to authorize this case to proceed as a collective action (docket entry no. 16) is **GRANTED**;

2. The plaintiffs' notice plan, amended as consistent with the accompanying Memorandum, is **APPROVED** in its entirety (*see* docket entry no. 44);

3. The defendants shall continue to provide plaintiffs with any discovered additional contact information for the potential class members in question;

4. The plaintiffs' motion for preliminary injunction (docket entry no. 14) is **GRANTED in part** as to defendant Argo Enterprises, Inc.; and **DENIED in part** as to defendants Lunil Services Co., Mayflower Textile Services Co., and Mukul Mehta;

5. Defendant Argo Enterprises, Inc. and any of its agents or employees are enjoined from engaging in any retaliatory acts in connection with this lawsuit;

6. The defendants' motions to strike declarations (docket entry nos. 17 & 29) are **DENIED**; and

7. The parties shall file by November 14, 2008 a status report detailing their efforts consistent with this order.

October 14, 2008
Date

/s/
Catherine C. Blake
United States District Judge